

NOTICE OF REMOVAL

EXHIBIT 117

EXHIBIT 116



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**HIGHLY CONFIDENTIAL
SUBJECT TO PROTECTIVE ORDER
INFORMATION REDACTED**

Transcript of Scott Ellington

Date: July 29, 2021

Case: UBS Securities LLC, et al. -v- Highland Capital Management, L.P.

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Transcript of Scott Ellington
Conducted on July 29, 2021

1 (1 to 4)

<p>1 IN THE UNITED STATES BANKRUPTCY COURT 2 FOR THE NORTHERN DISTRICT OF TEXAS 3 DALLAS DIVISION 4 In re § 5 HIGHLAND CAPITAL § Chapter 11 6 MANAGEMENT, L.P., § Case No. 19-34054-SGJ11 7 Debtor. § 8 UBS SECURITIES LLC AND § 9 UBS AG LONDON BRANCH, § 10 Plaintiffs, § 11 vs. § Adversary Proceeding 12 HIGHLAND CAPITAL § No. 21-03020-sgj 13 MANAGEMENT, L.P., § 14 Defendant. § 15 16 HIGHLY CONFIDENTIAL 17 SUBJECT TO PROTECTIVE ORDER 18 INFORMATION REDACTED 19 Videotaped Deposition of 20 SCOTT BYRON ELLINGTON 21 Conducted Virtually 22 Thursday, July 29, 2021 23 10:39 a.m. EST 24 25 Job No.: 386794 26 Pages: 1 - 407 27 Reported by: Lisa M. Barrett, RPR, CRR, CRC, CSR</p>	<p>1 APPEARANCES 2 ON BEHALF OF PLAINTIFFS UBS SECURITIES LLC 3 AND UBS AG LONDON BRANCH: 4 Andrew B. Clubok (Via Zoom) 5 LATHAM & MATKINS LLP 6 555 Eleventh Street, N.W., Suite 1000 7 Washington, D.C. 20004 8 (202) 637-2200 9 Andrew.clubok@lw.com 10 11 Shannon E. McLaughlin 12 Robert Allen 13 LATHAM & MATKINS LLP 14 1271 Avenue of the Americas 15 New York, NY 10020 16 (212) 906-4612 17 Shannon.mclaughlin@lw.com 18 19 20 21 22 23 24 25</p>
<p>1 Videotaped virtual deposition of SCOTT BYRON 2 ELLINGTON, pursuant to notice, before Lisa M. 3 Barrett, a Certified Shorthand Reporter, 4 Registered Professional Reporter, Certified 5 Realtime Reporter, and a Notary Public in and for 6 the State of Maryland. 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 APPEARANCES CONTINUED 2 ON BEHALF OF DEFENDANT HIGHLAND CAPITAL 3 MANAGEMENT, L.P.: 4 Robert J. Feinstein (Via Zoom) 5 Greg Demo 6 PACHULSKI STANG ZIEHL & JONES LLP 7 780 Third Avenue, 34th Floor 8 New York, New York 10017-2024 9 (212) 561-7700 10 Rfeinstein@pszjlaw.com 11 12 13 ON BEHALF OF THE WITNESS: 14 Frances A. Smith 15 Eric Soderlund 16 ROSS & SMITH, PC 17 700 N. Pearl Street, Suite 1610 18 Dallas, Texas 75201 19 (214) 377-7879 20 Frances.smith@judithwross.com 21 22 23 24 25</p>

Transcript of Scott Ellington
Conducted on July 29, 2021

3 (9 to 12)

9	11
<p>1 PREVIOUSLY MARKED EXHIBITS</p> <p>2</p> <p>3 NUMBER DESCRIPTION PAGE</p> <p>4</p> <p>5 Exhibit 50 140</p> <p>6 Exhibit 26 152</p> <p>7 Exhibit 77 156</p> <p>8 Exhibit 39 190</p> <p>9 Exhibit 26 197</p> <p>10 Exhibit 28 199</p> <p>11 Exhibit 61 255</p> <p>12 Exhibit 47 284</p> <p>13 Exhibit 2 310</p> <p>14 Exhibit 82 329</p> <p>15 Exhibit 38 333</p> <p>16 Exhibit 55 339</p> <p>17 Exhibit 69 354</p> <p>18 Exhibit 70 365</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 states Bankruptcy Court for the Northern District</p> <p>2 of Texas, Dallas Division. Case number</p> <p>3 1934054FGJ11.</p> <p>4 Today's date is July 29th, 2021.</p> <p>5 The time on my video monitor is</p> <p>6 10:40 a.m., eastern time.</p> <p>7 My name is Robert Leonard. I'm the</p> <p>8 Video Specialist. I represent Planet Depos.</p> <p>9 This deposition is being taken via Zoom</p> <p>10 online.</p> <p>11 Will counsel please identify themselves</p> <p>12 verbally and state who they represent.</p> <p>13 MR. CLUBOK: Good morning. This is</p> <p>14 Andrew Clubok and Shannon McLaughlin from Latham &</p> <p>15 Watkins LLP on behalf of UBS.</p> <p>16 MR. FEINSTEIN: Good morning. This is</p> <p>17 Robert Feinstein, Pachulski Stang Ziehl & Jones.</p> <p>18 We are counsel for the defendant in the adversary</p> <p>19 proceeding, Highland Capital Management LP.</p> <p>20 My colleague Greg Demo is also on the</p> <p>21 Zoom.</p> <p>22 MS. SMITH: Good morning. Frances</p> <p>23 Smith with Ross and Smith on behalf of the</p> <p>24 non-party witness, Scott Ellington.</p> <p>25 MR. CLUBOK: Okay. Can you swear the</p>
10	12
<p>1 HIGHLY CONFIDENTIAL</p> <p>2 Videotaped Deposition of Scott Ellington</p> <p>3 Conducted Virtually</p> <p>4 Thursday, July 29, 2021</p> <p>5 --- Commencing at 10:30 a.m. (EST)</p> <p>6 REMOTE TECHNICIAN: Thank you to</p> <p>7 everyone for attending this proceeding remotely,</p> <p>8 which we anticipate will run smoothly.</p> <p>9 Please remember to speak slowly and do</p> <p>10 your best not to talk over one another. Please be</p> <p>11 aware that we are recording the proceeding for</p> <p>12 backup purposes. Any off-the-record discussion</p> <p>13 should be had away from the computer. Please</p> <p>14 remember to mute your mic for those conversations.</p> <p>15 Have your video enabled to help the</p> <p>16 reporter identify who is speaking. If you are</p> <p>17 unable to connect with the video and are</p> <p>18 connecting via phone, please identify yourself</p> <p>19 each time.</p> <p>20 And apologies in advance for any</p> <p>21 technical-related interruptions. Thank you.</p> <p>22 THE VIDEOGRAPHER: Here begins video</p> <p>23 file number 1 in the video deposition of Scott</p> <p>24 Ellington in the matter of UBC (sic) Securities</p> <p>25 versus Highland Capital Management in the United</p>	<p>1 witness in, please.</p> <p>2 THE VIDEOGRAPHER: The court reporter</p> <p>3 today is Lisa Barrett. She also represents Planet</p> <p>4 Depos.</p> <p>5 Will the court reporter please swear in</p> <p>6 the witness.</p> <p>7 (OATH STIPULATION)</p> <p>8 SCOTT BYRON ELLINGTON, called as a witness,</p> <p>9 having been duly sworn was examined</p> <p>10 and testified as follows:</p> <p>11 EXAMINATION</p> <p>12 BY MR. CLUBOK:</p> <p>13 Q Okay. Good morning, Mr. Ellington.</p> <p>14 A Good morning, Mr. Clubok.</p> <p>15 Q Can you state your full name, please?</p> <p>16 A Scott Byron Ellington.</p> <p>17 Q What is your home address?</p> <p>18 A I currently don't have a home address.</p> <p>19 I recently sold the place I was living.</p> <p>20 Q Where are you living right now?</p> <p>21 A I'm staying between my father's house</p> <p>22 and my girlfriend's house.</p> <p>23 Q And today, you are taking the</p> <p>24 deposition at your girlfriend's house.</p> <p>25 A Correct.</p>

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Transcript of Scott Ellington

9 (33 to 36)

Conducted on July 29, 2021

<p>33</p> <p>1 I don't know what Ms. Irving's ability to work</p> <p>2 looks like in the future.</p> <p>3 Q And what about Mr. Leventon?</p> <p>4 A I would highly assume so.</p> <p>5 Q Highly assume that he would be slated</p> <p>6 to get equity when you figure out a plan for</p> <p>7 distributing equity to employees; correct?</p> <p>8 A I agree.</p> <p>9 Q When did you get the idea to form</p> <p>10 Skyview?</p> <p>11 A Five years ago.</p> <p>12 Q And did you make efforts to make</p> <p>13 Skyview a reality prior to leaving Highland</p> <p>14 Capital Management?</p> <p>15 MS. SMITH: Objection as to form.</p> <p>16 THE WITNESS: Yes. Yes, several times.</p> <p>17 BY MR. CLUBOK:</p> <p>18 Q And so you'd been planning to form</p> <p>19 Skyview during the last year of working at</p> <p>20 Highland Capital Management, at least; correct?</p> <p>21 A Yes, for many years before that.</p> <p>22 Q In fact, you incorporated just two days</p> <p>23 after you were fired from Highland Capital</p> <p>24 Management?</p> <p>25 MS. SMITH: Objection as to form.</p>	<p>35</p> <p>1 wouldn't consider it as operating out of NexBank's</p> <p>2 offices.</p> <p>3 BY MR. CLUBOK:</p> <p>4 Q Have any Skyview employees given the</p> <p>5 NexBank offices as their business address as far</p> <p>6 as you know?</p> <p>7 A I have no idea what they've given as a</p> <p>8 business address.</p> <p>9 Q When you worked out agreements with</p> <p>10 your clients, did you ever include a business</p> <p>11 address for Skyview Group in any of those</p> <p>12 agreements?</p> <p>13 A I haven't been involved in working out</p> <p>14 those agreements.</p> <p>15 Q Has Skyview ever represented to any</p> <p>16 clients that its business address was the NexBank</p> <p>17 office?</p> <p>18 A I --</p> <p>19 MS. SMITH: Objection as to form.</p> <p>20 THE WITNESS: Sorry. I don't know.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q If they did so, that would be false;</p> <p>23 correct?</p> <p>24 MS. SMITH: Objection as to form.</p> <p>25 THE WITNESS: That would be false, in</p>
<p>34</p> <p>1 THE WITNESS: I don't know when the</p> <p>2 entity was incorporated.</p> <p>3 BY MR. CLUBOK:</p> <p>4 Q Fair to say it was very shortly after</p> <p>5 you were terminated from Highland Capital</p> <p>6 Management?</p> <p>7 A That would be my assumption, yes.</p> <p>8 Q Does Jim Dondero have any sort of</p> <p>9 economic stake in Skyview, in -- directly or</p> <p>10 indirectly?</p> <p>11 A No.</p> <p>12 Q What is Mr. Dondero's relationship to</p> <p>13 Skyview, if any?</p> <p>14 MS. SMITH: Objection as to form.</p> <p>15 THE WITNESS: Mr. Dondero's entity is</p> <p>16 related to Helm (inaudible) or some of the</p> <p>17 contractual clients.</p> <p>18 BY MR. CLUBOK:</p> <p>19 Q And Skyview is currently operating out</p> <p>20 of NexBank's offices; correct?</p> <p>21 MS. SMITH: Objection as to form. He's</p> <p>22 already explained that multiple times.</p> <p>23 THE WITNESS: Skyview employees on an</p> <p>24 ad hoc basis work in the NexBank offices.</p> <p>25 I don't know how many, but I certainly</p>	<p>36</p> <p>1 my opinion, yes.</p> <p>2 BY MR. CLUBOK:</p> <p>3 Q So if a Skyview employee was</p> <p>4 representing that his or her business address was</p> <p>5 the NexBank office, that would be a false</p> <p>6 statement; correct?</p> <p>7 MS. SMITH: Objection as to form.</p> <p>8 THE WITNESS: To me, it would be</p> <p>9 because I don't consider that where Skyview's</p> <p>10 offices are since a very small number of</p> <p>11 employees, as far as I know, worked there on an ad</p> <p>12 hoc basis.</p> <p>13 BY MR. CLUBOK:</p> <p>14 Q Do you have any other employment</p> <p>15 currently? And I apologize if I asked that</p> <p>16 already, but...</p> <p>17 A I do not. You already asked, and I do</p> <p>18 not.</p> <p>19 Q Do you have any other source of income,</p> <p>20 other than the income you get from Skyview Group?</p> <p>21 A Well, I have shares in the REITs that</p> <p>22 are granted by the independent board members to</p> <p>23 myself. But I don't know if you would consider</p> <p>24 that income or not.</p> <p>25 Q The REITs that Skyview Group manages?</p>

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Transcript of Scott Ellington

10 (37 to 40)

Conducted on July 29, 2021

<p style="text-align: right;">37</p> <p>1 A Skyview Group does not manage anything.</p> <p>2 Q All right. Are these REITs that are</p> <p>3 clients of Skyview Group?</p> <p>4 A NexPoint Advisors --</p> <p>5 MS. SMITH: Objection as to form.</p> <p>6 THE WITNESS: Sorry, Frances, I keep</p> <p>7 stepping on you, I apologize.</p> <p>8 NexPoint Advisors is the investment</p> <p>9 manager that manages the REIT on our part.</p> <p>10 BY MR. CLUBOK:</p> <p>11 Q And is NexPoint Advisors a part of</p> <p>12 Skyview Group?</p> <p>13 A Yes.</p> <p>14 Q And you are allocated shares in the</p> <p>15 REITs that NexPoint Advisors manages; correct?</p> <p>16 A Yes. And -- by the independent board</p> <p>17 members, as they see fit.</p> <p>18 Q Do you have any other source of income?</p> <p>19 A No.</p> <p>20 Q As a rough percentage, what do you</p> <p>21 expect your Skyview Group income to be in terms of</p> <p>22 your total income as vis-a-vis the REITs?</p> <p>23 MS. SMITH: Objection as to form.</p> <p>24 Again, none of this is relevant to the topics of</p> <p>25 the deposition.</p>	<p style="text-align: right;">39</p> <p>1 A I believe it's an entity that holds</p> <p>2 claims that the former Highland employees</p> <p>3 potentially have against the debtor.</p> <p>4 Q Did you assign your claim to CPCM?</p> <p>5 A I believe I did.</p> <p>6 Q For what consideration?</p> <p>7 A My employment.</p> <p>8 Q Your employment with whom?</p> <p>9 A My employment with Skyview.</p> <p>10 Q You own Skyview; correct?</p> <p>11 A Correct.</p> <p>12 Q And you had to assign your claim to</p> <p>13 CPCM as -- in order to get a job with a company</p> <p>14 you fully owned?</p> <p>15 A No.</p> <p>16 Q Okay. So was there any consideration</p> <p>17 at all for the assignment of your claim to CPCM?</p> <p>18 MS. SMITH: Objection to form. He's</p> <p>19 already answered that.</p> <p>20 (No response)</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q Was there any consideration at all for</p> <p>23 the assignment of your claim to CPCM?</p> <p>24 A I believe it was my employment with</p> <p>25 Skyview.</p>
<p style="text-align: right;">38</p> <p>1 THE WITNESS: I wouldn't know how to</p> <p>2 calculate that because they could give me zero or</p> <p>3 they could give me ad infinitum shares. But in</p> <p>4 looking historically, it would be less than</p> <p>5 probably -- I don't know, I'd have to do the math,</p> <p>6 but about 10 or 15 percent. But, again, it's not</p> <p>7 necessarily income.</p> <p>8 Q Are there any subsidiaries of Skyview</p> <p>9 Group?</p> <p>10 A I would -- I would have to have</p> <p>11 somebody update the org chart. I know that that's</p> <p>12 been considered, but I don't know what's been</p> <p>13 implemented.</p> <p>14 Q Have you ever heard of an entity called</p> <p>15 Skyview Legal PC?</p> <p>16 A I know that something was being</p> <p>17 discussed about a legal PC. I don't know what the</p> <p>18 gentlemen working on it decided to name it or if</p> <p>19 it's been implemented.</p> <p>20 Q Who's the gentlemen working on it?</p> <p>21 A I believe JP Seery and Isaac Leventon</p> <p>22 were the people in charge of that.</p> <p>23 Q Do you know what CPCM LLC is?</p> <p>24 A I do.</p> <p>25 Q What is it?</p>	<p style="text-align: right;">40</p> <p>1 Q But that employment you had the right</p> <p>2 to give yourself, regardless of whether or not you</p> <p>3 assigned your claim to CPCM as a hundred percent</p> <p>4 owner of Skyview; correct?</p> <p>5 MS. SMITH: Objection to form.</p> <p>6 THE WITNESS: Theoretically, yes.</p> <p>7 BY MR. CLUBOK:</p> <p>8 Q Not just theoretically, actually, as</p> <p>9 far as you know.</p> <p>10 As far as you understand, owning a</p> <p>11 company a hundred percent, you certainly had the</p> <p>12 right to employ yourself in any capacity you</p> <p>13 chose; correct?</p> <p>14 A Yeah, I would agree with that.</p> <p>15 Q And is there any other consideration</p> <p>16 at all that you could identify, even a peppercorn,</p> <p>17 for the transfer or assignment of your claims to</p> <p>18 CPCM?</p> <p>19 A I don't remember the agreements in</p> <p>20 detail. I'd have to look at the agreements</p> <p>21 relating to (inaudible) to see what (inaudible)</p> <p>22 was considered.</p> <p>23 Q But as you sit here today, you are not</p> <p>24 aware of any; correct?</p> <p>25 A Not that I can recall, but there may be</p>

Transcript of Scott Ellington

11 (41 to 44)

Conducted on July 29, 2021

<p style="text-align: right;">41</p> <p>1 some.</p> <p>2 Q Well, we're going to put up Exhibit 1.</p> <p>3 By the way, do you have exhibits in front of you?</p> <p>4 A I have a folder of (inaudible) yes,</p> <p>5 sir, I do.</p> <p>6 Q Okay. Take a look at Exhibit 1.</p> <p>7 A Give me a second to find it.</p> <p>8 Q Sorry. It's -- I said Exhibit 1.</p> <p>9 It is Tab actually 1, and it is going</p> <p>10 to be Exhibit 86. I apologize.</p> <p>11 (Deposition Exhibit 86 was marked for</p> <p>12 identification.)</p> <p>13 THE WITNESS: Exhibit 86. Okay.</p> <p>14 BY MR. CLUBOK:</p> <p>15 Q You may or may not have that one in</p> <p>16 your --</p> <p>17 A I believe that they end at 84.</p> <p>18 Q Okay. So we'll put up tab -- or</p> <p>19 Exhibit 86 on the screen.</p> <p>20 Exhibit 86 is a Notice of Transfer of</p> <p>21 Claim Other Than for Security by Scott Ellington</p> <p>22 to CPCPM.</p> <p>23 A Okay.</p> <p>24 MS. SMITH: Andy, since we are not</p> <p>25 copied on the exhibits, could someone please load</p>	<p style="text-align: right;">43</p> <p>1 A I see that written on the document,</p> <p>2 yes.</p> <p>3 Q And on page 2, it says, "For value</p> <p>4 received, the adequacy and sufficiency of which</p> <p>5 are hereby acknowledged, Scott Ellington has</p> <p>6 unconditionally and irrevocably sold, transferred,</p> <p>7 assigned to CPCPM," et cetera, et cetera.</p> <p>8 Do you see that?</p> <p>9 A I do.</p> <p>10 Q And as far as you sit here today, the</p> <p>11 only consideration you can think of is the</p> <p>12 employment you gave yourself at Skyview Group;</p> <p>13 correct?</p> <p>14 A And, again, I'd have to see the --</p> <p>15 MS. SMITH: Objection, form.</p> <p>16 THE WITNESS: I'd have to see all</p> <p>17 the -- the related documents. But that's --</p> <p>18 that's what I consider the consideration without</p> <p>19 looking at the documents.</p> <p>20 BY MR. CLUBOK:</p> <p>21 Q What documents would you have to look</p> <p>22 at?</p> <p>23 A I don't know what's out there related</p> <p>24 to this. I'm being shown two pages. I wasn't</p> <p>25 involved in negotiation or drafting of these. I</p>
<p style="text-align: right;">42</p> <p>1 them into the chat?</p> <p>2 MR. CLUBOK: Yes. We'll start to make</p> <p>3 them --</p> <p>4 Shannon, maybe you can circulate them</p> <p>5 at the same time that we put them up on the</p> <p>6 screen.</p> <p>7 MS. McLAUGHLIN: Certainly.</p> <p>8 MR. CLUBOK: Thank you.</p> <p>9 BY MR. CLUBOK:</p> <p>10 Q And Mr. Ellington, can you --</p> <p>11 MR. CLUBOK: Let's see.</p> <p>12 Nate, we got it up there?</p> <p>13 REMOTE TECHNICIAN: Yes, I will -- I</p> <p>14 will circulate the document in chat. Or actually,</p> <p>15 Shannon has already done --</p> <p>16 MR. CLUBOK: Can you put the document</p> <p>17 on the screen, or maybe it's up there and I just</p> <p>18 don't see it.</p> <p>19 REMOTE TECHNICIAN: Yes. Thank you,</p> <p>20 one moment.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q So this is the -- do you recognize</p> <p>23 Exhibit 86 as the Notice of Transfer of Claim</p> <p>24 Other Than for Security with respect to yourself,</p> <p>25 as the transferor and CPCPM as the transferee?</p>	<p style="text-align: right;">44</p> <p>1 don't know what else is relatable.</p> <p>2 Q Were you involved in any negotiation of</p> <p>3 the transfer of claims to CPCPM by any -- any</p> <p>4 individual?</p> <p>5 A No.</p> <p>6 Q Were you involved at all in the</p> <p>7 approval of those transfers?</p> <p>8 A No.</p> <p>9 Q Did you have any involvement at all?</p> <p>10 A None.</p> <p>11 Q You just -- who told you about it?</p> <p>12 A I believe counsel.</p> <p>13 Q You learned about the transfers through</p> <p>14 counsel and no other -- no other source?</p> <p>15 MS. SMITH: Objection to form.</p> <p>16 THE WITNESS: Yeah. Yes, at the time I</p> <p>17 was under a restraining order, so I had very</p> <p>18 limited communication with anyone, but counsel.</p> <p>19 Q Do you know whose idea it was to</p> <p>20 transfer the claims to the CPCPM?</p> <p>21 MS. SMITH: Objection.</p> <p>22 THE WITNESS: No, I don't.</p> <p>23 MS. SMITH: Do not answer to the extent</p> <p>24 it calls for privileged information.</p> <p>25 THE WITNESS: I do not know.</p>

Transcript of Scott Ellington

12 (45 to 48)

Conducted on July 29, 2021

<p style="text-align: right;">45</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q Did you ever discuss it with anyone</p> <p>3 other than your counsel?</p> <p>4 A No.</p> <p>5 Q CPCM is wholly owned by Skyview Group?</p> <p>6 A I'd have to look at an org chart or</p> <p>7 related documents. I'm not certain, but that's my</p> <p>8 understanding.</p> <p>9 Q So you have all the economic interest</p> <p>10 in CPCM; correct?</p> <p>11 A Again, I'd have to look at how it was</p> <p>12 structured.</p> <p>13 I don't -- I just know anecdotally what</p> <p>14 I was told.</p> <p>15 Q As far as you know sitting here today,</p> <p>16 can you -- are you aware of anyone else who has</p> <p>17 any other economic interest in CPCM other than</p> <p>18 you?</p> <p>19 A No, I think it's a wholly-owned sub of</p> <p>20 Skyview, but, again, I'd have to look at the</p> <p>21 documents to be certain.</p> <p>22 Q CPCM is represented by Ross and Smith</p> <p>23 and Baker MacKenzie.</p> <p>24 A That's my understanding, yes.</p> <p>25 Q And these are the attorneys who are</p>	<p style="text-align: right;">47</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q Are you aware of anyone else they</p> <p>3 represent?</p> <p>4 A I believe they represent Mr. Waterhouse</p> <p>5 and potentially Mr. Collins. I believe them or a</p> <p>6 subset of them represents Skyview as an entity,</p> <p>7 but I don't know that for a fact as I haven't seen</p> <p>8 those engagement letters with my own eyes.</p> <p>9 Q Who hired them?</p> <p>10 A Who hired whom?</p> <p>11 Q Who hired Ross and Smith to represent</p> <p>12 you and your colleagues?</p> <p>13 A Well, I personally hired them to</p> <p>14 represent me. I would assume each individual</p> <p>15 hired them on their own behalf.</p> <p>16 Q And when you hired them, did you -- you</p> <p>17 worked out no payment arrangements with them; you</p> <p>18 just hired them and didn't have any compensation</p> <p>19 worked out?</p> <p>20 MS. SMITH: Objection to form.</p> <p>21 THE WITNESS: The payor of the bills,</p> <p>22 as far as I understand, are through various</p> <p>23 indemnities and insurance policies with entities</p> <p>24 and insurers. But, again, that's not -- I'm not</p> <p>25 the person that processes or pays the bills, so I</p>
<p style="text-align: right;">46</p> <p>1 sitting here today with you during this</p> <p>2 deposition?</p> <p>3 A Yes.</p> <p>4 Q And Mr. Sevilla, Mr. Leventon,</p> <p>5 Mr. DiOrio and Ms. Lucas/Irving also shared that</p> <p>6 same set of counsel; correct?</p> <p>7 A That's my understanding, yes.</p> <p>8 Q Who is paying the legal fees for Ross</p> <p>9 and Smith?</p> <p>10 A I'm not certain.</p> <p>11 MS. SMITH: Objection to form.</p> <p>12 BY MR. CLUBOK:</p> <p>13 Q You have -- Ross and Smith, Ms. Smith</p> <p>14 has been here object -- making these objections.</p> <p>15 She has got a colleague of hers also sitting on</p> <p>16 this deposition, and you have no idea who's paying</p> <p>17 their bills?</p> <p>18 A No, I don't.</p> <p>19 Q Who else do they represent, other than</p> <p>20 you, CPCM, Mr. Sevilla, Mr. Leventon and Mr.</p> <p>21 DiOrio and Ms. Irving?</p> <p>22 A No, I don't.</p> <p>23 MS. SMITH: Objection -- objection,</p> <p>24 calls for speculation and potentially privileged</p> <p>25 communications.</p>	<p style="text-align: right;">48</p> <p>1 don't know how they're being paid.</p> <p>2 BY MR. CLUBOK:</p> <p>3 Q When you -- when you said you were</p> <p>4 going to work with Ms. Smith, did you discuss</p> <p>5 compensation in any way of who would pay for it?</p> <p>6 MS. SMITH: Objection, privileged.</p> <p>7 THE WITNESS: Yeah, I think that's</p> <p>8 getting into privileged communications.</p> <p>9 BY MR. CLUBOK:</p> <p>10 Q Do you have any idea who is paying</p> <p>11 Ms. Smith's bills to represent you and your</p> <p>12 colleagues?</p> <p>13 A Currently, no.</p> <p>14 Q Did you ever have any idea as to who</p> <p>15 was going to be paying Ms. Smith's bills to</p> <p>16 represent you, your colleagues and the company you</p> <p>17 100 percent own?</p> <p>18 A Yes.</p> <p>19 MS. SMITH: Objection to form.</p> <p>20 BY MR. CLUBOK:</p> <p>21 Q And who -- and what was your</p> <p>22 understanding?</p> <p>23 A At the inception, I believe it was an</p> <p>24 entity called Gov Re.</p> <p>25 Q So when you first hired Ms. Smith, you</p>

Transcript of Scott Ellington

14 (53 to 56)

Conducted on July 29, 2021

<p>53</p> <p>1 THE WITNESS: It's an assumption,</p> <p>2 Mr. Waterhouse.</p> <p>3 BY MR. CLUBOK:</p> <p>4 Q Did you discuss with any individual</p> <p>5 other than your -- the lawyers assigning any</p> <p>6 claims to Skyview Group?</p> <p>7 -- (overspeaking) --</p> <p>8 A Assigning --</p> <p>9 Q Excuse me -- (overspeaking) --</p> <p>10 assigning things with CPCM?</p> <p>11 A No, only discussed with counsel.</p> <p>12 Q When were you first employed by</p> <p>13 Highland Capital Management?</p> <p>14 A May of 2007.</p> <p>15 Q How did you start working for Highland</p> <p>16 Capital Management?</p> <p>17 A I was in the syndications group, the</p> <p>18 real estate group of Wells Fargo. Highland bought</p> <p>19 into those syndicated levels, and they asked me to</p> <p>20 come interview to work in-house with them.</p> <p>21 Q Prior to Wells Fargo, where did you</p> <p>22 work?</p> <p>23 A Countrywide Home Loans.</p> <p>24 Q Doing what?</p> <p>25 A In the syndications group, and in the</p>	<p>55</p> <p>1 Countrywide?</p> <p>2 A It would have been about 2002, I</p> <p>3 believe.</p> <p>4 Q Okay. Going back to your employment</p> <p>5 with HCM, when you first started there, what was</p> <p>6 your job title?</p> <p>7 A In-house counsel.</p> <p>8 Q And eventually you became the general</p> <p>9 counsel?</p> <p>10 A Yes.</p> <p>11 Q When was that?</p> <p>12 A I'd have to go back and look. I don't</p> <p>13 recall. But I believe it was around 2010.</p> <p>14 Q So, after the -- you remember that UBS</p> <p>15 filed a lawsuit against Highland in roughly</p> <p>16 2000 -- in early 2009?</p> <p>17 A Yes.</p> <p>18 MS. SMITH: Objection -- objection.</p> <p>19 Before you start this line of questioning, I want</p> <p>20 to caution you, Mr. Ellington, not to disclose any</p> <p>21 privileged communications with counsel that you</p> <p>22 might have gotten in your role as Highland Capital</p> <p>23 GC, unless the debtor -- or I will rely on the</p> <p>24 debtor to assert privilege, if needed.</p> <p>25 MR. FEINSTEIN: Well, yes. It is Rob</p>
<p>54</p> <p>1 -- ultimately in the bankruptcy group.</p> <p>2 Q Doing legal work?</p> <p>3 A Yes.</p> <p>4 Q Prior to -- sorry, Countrywide, you</p> <p>5 said?</p> <p>6 A Yeah, Countrywide Home Loans.</p> <p>7 Q What did you do prior to working at</p> <p>8 Countrywide?</p> <p>9 A I worked at a talent agency in Los</p> <p>10 Angeles.</p> <p>11 Q In what capacity?</p> <p>12 A It was an assistant.</p> <p>13 Q What year?</p> <p>14 A The year would have been starting in</p> <p>15 2000.</p> <p>16 Q So when did you graduate law school?</p> <p>17 A 2000.</p> <p>18 Q And your first job was as an assistant</p> <p>19 at a talent agency.</p> <p>20 A Yes.</p> <p>21 Q Why did you do that?</p> <p>22 A Because to get into the top talent</p> <p>23 agencies, you had to have a law degree with an</p> <p>24 MBA, and I wanted to work in the film industry.</p> <p>25 Q Okay. And when did you move to</p>	<p>56</p> <p>1 Feinstein. So that privilege does belong to the</p> <p>2 debtor and the extent to which we assert the</p> <p>3 privilege, you will know on a question-by-question</p> <p>4 basis.</p> <p>5 If you don't hear an objection from us,</p> <p>6 it's because we determined either the privilege</p> <p>7 doesn't apply or one of the recognized exceptions</p> <p>8 apply, like the crime fraud exception, or that</p> <p>9 we're waiving it. But in all events, we'll assert</p> <p>10 the privilege as and if we see fit; otherwise,</p> <p>11 counsel should feel free to answer the question --</p> <p>12 excuse me, the witness should feel free to answer</p> <p>13 the questions.</p> <p>14 THE WITNESS: Mr. Feinstein, thank you.</p> <p>15 BY MR. CLUBOK:</p> <p>16 Q Do you understand?</p> <p>17 A Yes.</p> <p>18 Q Do you understand the consent?</p> <p>19 A Yes.</p> <p>20 Q So you became general counsel after UBS</p> <p>21 filed its lawsuit against Highland in New York?</p> <p>22 A Yes.</p> <p>23 Q And in addition to being general</p> <p>24 counsel, were you a partner in Highland Capital</p> <p>25 Management?</p>

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Transcript of Scott Ellington

15 (57 to 60)

Conducted on July 29, 2021

<p>57</p> <p>1 A Ultimately, yes.</p> <p>2 Q When was that?</p> <p>3 A I don't remember the date.</p> <p>4 Q Roughly?</p> <p>5 A I want to say around '13, maybe '12 --</p> <p>6 2012 or 2013.</p> <p>7 Q Okay. And you remained a partner until</p> <p>8 the bankruptcy?</p> <p>9 A Until my termination, yes.</p> <p>10 Q Until your termination.</p> <p>11 And did you remain general counsel</p> <p>12 until your termination?</p> <p>13 A Yes.</p> <p>14 Q Who did you report to at Highland?</p> <p>15 A Jim Dondero.</p> <p>16 Q Where did you work?</p> <p>17 A In the offices at the Crescent.</p> <p>18 Q Were you physically near Jim Dondero,</p> <p>19 your office?</p> <p>20 A No, I was not physically near Dondero.</p> <p>21 Q Same floor?</p> <p>22 A Same floor, yes. There was only one</p> <p>23 floor.</p> <p>24 Q And you had your own private office?</p> <p>25 A I did.</p>	<p>59</p> <p>1 A Reported to Mr. Sargent.</p> <p>2 Q When he was the chief compliance</p> <p>3 officer?</p> <p>4 A Yeah, they -- they were in</p> <p>5 compliance-based roles at the end of my tenure.</p> <p>6 Q When Mr. Sargent was the chief</p> <p>7 compliance officer, who did he report to?</p> <p>8 A Jim Dondero.</p> <p>9 Q Was there anyone else in the Highland</p> <p>10 Capital Management legal department, other than</p> <p>11 the names you've identified?</p> <p>12 A Sarah Bell, my executive assistant,</p> <p>13 reported to me. I believe she may have reported</p> <p>14 to Mr. Collins. I believe she reported to</p> <p>15 Mr. Collins, technically.</p> <p>16 Q Anyone else in the Highland Capital</p> <p>17 Management legal department?</p> <p>18 A Not that I can recall.</p> <p>19 Q Prior to becoming general counsel, were</p> <p>20 you the assistant general counsel?</p> <p>21 A I was.</p> <p>22 Q And did you ever hold a title of</p> <p>23 portfolio manager?</p> <p>24 A I did.</p> <p>25 Q When?</p>
<p>58</p> <p>1 Q And you spoke with Mr. Dondero on an</p> <p>2 average of a daily basis?</p> <p>3 A Yes.</p> <p>4 MS. SMITH: Objection as to form.</p> <p>5 THE WITNESS: I'm sorry, Frances.</p> <p>6 Yes.</p> <p>7 BY MR. CLUBOK:</p> <p>8 Q Did anyone report to you directly at</p> <p>9 Highland Capital Management?</p> <p>10 A Yes.</p> <p>11 Q Who?</p> <p>12 A I'll try my best to give an exhaustive</p> <p>13 least.</p> <p>14 Thomas certainly reported to me in his</p> <p>15 deputy general counsel role, but not in his chief</p> <p>16 compliance officer role.</p> <p>17 JP Sevilla, Ms. Irving, Mr. DiOrio,</p> <p>18 Ms. Vitiello, Ms. Leventon -- I mean, Mr.</p> <p>19 Leventon, sorry. I think that was the direct</p> <p>20 reports upon determination, but at different</p> <p>21 times, it's been various other people.</p> <p>22 Q What about Lauren Thedford?</p> <p>23 A She did not report to me. She reported</p> <p>24 to Mr. Sargent.</p> <p>25 Q And what about Jason Post?</p>	<p>60</p> <p>1 A I'd have to go back and think about</p> <p>2 that, Mr. Clubok. I apologize. But it was, I</p> <p>3 want to say, '08 and '09, maybe in '10.</p> <p>4 Q When you communicated with Mr. Dondero,</p> <p>5 is it fair to say you -- you communicated</p> <p>6 verbally, like in-person?</p> <p>7 A I communicated verbally in-person as</p> <p>8 well as telephonically.</p> <p>9 Q How about by text message?</p> <p>10 A Very limited.</p> <p>11 Q When you would text message with</p> <p>12 Mr. Dondero, which phone would you use?</p> <p>13 A 214-649-5475.</p> <p>14 Q Did you use any other messenger systems</p> <p>15 to communicate with Mr. Dondero, like --</p> <p>16 A No.</p> <p>17 Q Did you ever use signal or What's App</p> <p>18 or any other text messaging?</p> <p>19 A No, I exclusively communicated with</p> <p>20 Mr. Dondero on iMessage.</p> <p>21 Q iMessage on your iPhone?</p> <p>22 A Yes.</p> <p>23 Q Did he have an iPhone?</p> <p>24 A Yes.</p> <p>25 MS. SMITH: Objection, form.</p>

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Transcript of Scott Ellington

16 (61 to 64)

Conducted on July 29, 2021

<p>61</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q Did you ever email with him?</p> <p>3 A Yeah, there was -- there was emails</p> <p>4 with Mr. Dondero.</p> <p>5 Q Who set your compensation at HCM?</p> <p>6 A I believe there was a compensation</p> <p>7 committee, but the ultimate arbiter was</p> <p>8 Mr. Dondero.</p> <p>9 Q Did you have responsibilities for any</p> <p>10 other HCM-affiliated or managed entities while you</p> <p>11 were the general counsel at Highland Capital</p> <p>12 Management?</p> <p>13 A I believe that I was a managing member</p> <p>14 or officers of various entities at different</p> <p>15 times.</p> <p>16 Q Did any of those entities separately</p> <p>17 compensate you for the work you did?</p> <p>18 A No.</p> <p>19 Q So all of the compensation you received</p> <p>20 came -- even if you did it on behalf of some of</p> <p>21 these other entities came directly from Highland</p> <p>22 Capital Management LP?</p> <p>23 A Yes.</p> <p>24 Q Was there ever a time when one of</p> <p>25 Highland's affiliated or managed funds paid you</p>	<p>63</p> <p>1 Q So I can get it clean for the record.</p> <p>2 And when you say -- it's like if I said</p> <p>3 it's not raining range outside and you said "No,"</p> <p>4 you're meaning yes, it's not raining, but it says</p> <p>5 no. So, anyway, I'm just going to ask you that</p> <p>6 again just not to make you repeat, but just so you</p> <p>7 can answer. Whatever your answer is I don't care.</p> <p>8 I just want to --</p> <p>9 A Yes, I understand that.</p> <p>10 Q Okay. So is it true that other than</p> <p>11 the NexPoint advisor-managed REITs in which you</p> <p>12 were granted shares, there was never a Highland</p> <p>13 Capital Management affiliate or managed fund that</p> <p>14 paid you directly while you were working at HCM;</p> <p>15 correct?</p> <p>16 MS. SMITH: Objection to form.</p> <p>17 THE WITNESS: That is my understanding,</p> <p>18 yes.</p> <p>19 BY MR. CLUBOK:</p> <p>20 Q When you were at Highland, you used</p> <p>21 email addresses that ended in "hcmlp.com" and</p> <p>22 "highlandcapital.com?"</p> <p>23 A Yes.</p> <p>24 Q Did you ever use any other email to</p> <p>25 conduct any business for Highland or any of its</p>
<p>62</p> <p>1 directly?</p> <p>2 A Again, only with --</p> <p>3 MS. SMITH: Objection to form.</p> <p>4 THE WITNESS: Again, only with the</p> <p>5 exception of the NexPoint Advisor-managed REITs</p> <p>6 when I was granted shares.</p> <p>7 BY MR. CLUBOK:</p> <p>8 Q So other than NexPoint Advisor-managed</p> <p>9 REITs in which you were granted shares, there was</p> <p>10 never a Highland Capital Management affiliate or</p> <p>11 managed fund that paid you directly; is that</p> <p>12 correct?</p> <p>13 A That paid me directly, no.</p> <p>14 Q Is that correct?</p> <p>15 A That's what -- that's my belief, yes.</p> <p>16 Q And by the way, that was an example of,</p> <p>17 I think, a double negative.</p> <p>18 The only reason I reiterated that</p> <p>19 question is if I say -- if you say -- I said was</p> <p>20 there -- I said was there never.</p> <p>21 I put in a negative. And you said</p> <p>22 "No," and so it became a little confusing. So</p> <p>23 I am just going to ask that question again without</p> <p>24 the negative.</p> <p>25 A Please.</p>	<p>64</p> <p>1 affiliates?</p> <p>2 MS. SMITH: Objection to form.</p> <p>3 THE WITNESS: For Highland or its</p> <p>4 affiliates, no.</p> <p>5 MR. CLUBOK: I'm sorry. What was the</p> <p>6 form objection to that, Ms. Smith?</p> <p>7 MS. SMITH: That was a -- that was a</p> <p>8 compound question.</p> <p>9 MR. CLUBOK: Okay. I'm trying to --</p> <p>10 one second here. My wife just nicely brought me a</p> <p>11 cup of coffee.</p> <p>12 MS. SMITH: I wish I had someone</p> <p>13 bringing me coffee.</p> <p>14 MR. CLUBOK: It's very nice. You guys</p> <p>15 may regret that I have coffee. I don't know.</p> <p>16 Sorry, let me back to it.</p> <p>17 BY MR. CLUBOK:</p> <p>18 Q When you conducted business for</p> <p>19 Highland Capital Management, did you ever use any</p> <p>20 other email, other than the HCMLP.com or the</p> <p>21 HighlandCapital.com?</p> <p>22 A No, not for business related to</p> <p>23 Highland Capital Management.</p> <p>24 Q While you were employed at Highland</p> <p>25 Capital Management, did you ever use any email for</p>

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Transcript of Scott Ellington

17 (65 to 68)

Conducted on July 29, 2021

<p>65</p> <p>1 any other business-related purpose?</p> <p>2 A Yes.</p> <p>3 Q And what emails -- what email or emails</p> <p>4 were that?</p> <p>5 A WWWSA -- or my name, sorry,</p> <p>6 "sasgmt.com."</p> <p>7 Q Under what circumstances would you use</p> <p>8 the sasmanagement.com email?</p> <p>9 A In things related to SAS or Sentinel or</p> <p>10 its related entities.</p> <p>11 Q Why?</p> <p>12 A Because we were instructed by</p> <p>13 compliance that all aspects of those businesses</p> <p>14 should be conducted on their own servers and</p> <p>15 completely separate from Highland Capital</p> <p>16 Management LP.</p> <p>17 Q Okay, other than that email address and</p> <p>18 the Highland-related email addresses that you've</p> <p>19 already mentioned, was there ever any other email</p> <p>20 that you used for any business purposes while you</p> <p>21 were employed at Highland Capital Management?</p> <p>22 A Not that I recall.</p> <p>23 Q Did you ever -- what is Blackland</p> <p>24 Associates?</p> <p>25 A Consulting firm.</p>	<p>67</p> <p>1 A OG Ventures? No.</p> <p>2 Q Were you surprised when you were hired</p> <p>3 from Highland Capital Management?</p> <p>4 A Yes.</p> <p>5 MS. SMITH: Objection as to form.</p> <p>6 BY MR. CLUBOK:</p> <p>7 Q Did you have a chance to clean out your</p> <p>8 office?</p> <p>9 A No.</p> <p>10 Q Have you performed any services for any</p> <p>11 HCM-related entities since your termination?</p> <p>12 A Other than in my employment with</p> <p>13 Skyview, but I don't know that it's considered</p> <p>14 related anymore due to the bankruptcy.</p> <p>15 Q When was the last time you spoke with</p> <p>16 Jim Dondero?</p> <p>17 A About 32 days ago.</p> <p>18 Q And prior to that, how frequently were</p> <p>19 you speaking to him?</p> <p>20 A Once every couple to three days.</p> <p>21 Q When's the last time you spoke with</p> <p>22 Isaac Leventon?</p> <p>23 A About 35 days ago.</p> <p>24 Q And prior to that, how often did you</p> <p>25 speak with Mr. Leventon?</p>
<p>66</p> <p>1 Q When was that -- what -- does that have</p> <p>2 any connection with Highland Capital Management?</p> <p>3 A None.</p> <p>4 Q Did you ever use emails with the</p> <p>5 blacklandassociates.com?</p> <p>6 A No.</p> <p>7 Q Did you ever -- what's your sister's</p> <p>8 name.</p> <p>9 A I have two sisters.</p> <p>10 Q What are their names?</p> <p>11 A Sharon Ellington and Marcia Maslow.</p> <p>12 Q Have either of those individuals ever</p> <p>13 done any work in connection with Highland Capital</p> <p>14 Management?</p> <p>15 A My sister Marcia assisted on some IT</p> <p>16 projects.</p> <p>17 Q Any other work that either of them ever</p> <p>18 did in connection with your work at Highland</p> <p>19 Capital Management?</p> <p>20 A My -- my other sister is an estate</p> <p>21 planning attorney, and she's helping me with my</p> <p>22 personal finances.</p> <p>23 Q Anything else?</p> <p>24 A Not that I -- not that I recall.</p> <p>25 Q Have you ever heard of OG Ventures?</p>	<p>68</p> <p>1 A Maybe a couple of times a week.</p> <p>2 Q When's the last time you spoke with</p> <p>3 JP Sevilla?</p> <p>4 A Close to 40 days ago, I believe.</p> <p>5 Q And how often did you speak to him</p> <p>6 prior to that?</p> <p>7 A A couple of times a week.</p> <p>8 Q When was the last time you spoke with</p> <p>9 Matt DiOrio?</p> <p>10 A I would say about 30 days ago.</p> <p>11 Q How often did you speak with him prior</p> <p>12 to that?</p> <p>13 A Two or three times a week.</p> <p>14 Q When was the last time you spoke with</p> <p>15 Ms. Irving?</p> <p>16 A Two plus months ago.</p> <p>17 Q What did Ms. Irving do for</p> <p>18 Skyview Group?</p> <p>19 A Ms. Irving has never worked for</p> <p>20 Skyview Group because she is on medical leave.</p> <p>21 Q Is Skyview Group paying her any</p> <p>22 compensation at all for 20 -- for -- strike that.</p> <p>23 Has Skyview Group agreed to pay her any</p> <p>24 compensation at all for 2021?</p> <p>25 A I have no idea.</p>

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Transcript of Scott Ellington

21 (81 to 84)

Conducted on July 29, 2021

<p>1 this is way off the track of the purpose of the 2 deposition. 3 THE WITNESS: Exactly the same as a 4 country club membership or a hunting club or a 5 tennis club or a golf membership, but it is paid 6 to an individual rancher. 7 BY MR. CLUBOK: 8 Q And you did enter into that arrangement 9 with Mr. Collins; right? 10 A No, Mr. Reid. 11 Q I'm sorry, Mr. Reid. 12 A And -- yeah, Mr. Reid and a partner of 13 his named Nate Palmer. And, again, they formed 14 the entity. I just paid my pro rata share to the 15 LLC. They run it, they manage it. 16 It is literally a friendship thing 17 that's centered around deer hunting. 18 Q And that firm for a while represented 19 Highland Capital Management in the litigation 20 against UBS; correct? 21 A Correct. 22 MS. SMITH: Objection to form. 23 BY MR. CLUBOK: 24 Q They did so until they sought to 25 withdraw earlier this year; correct?</p>	<p>1 individuals that you can recall ever discussing 2 what to do about the judgment that UBS obtained in 3 New York since Highland's bankruptcy and prior to 4 you being terminated from Highland Capital 5 Management; correct? 6 A I'm sure I hypothecated with -- I'm 7 certain that I did with Mr. Leventon just about, 8 you know, what we thought the outcome would be for 9 Mr. Sevilla. And I'm sure that I talked to 10 Mr. Reid about it several times, you know, because 11 I -- I interact with him socially, so you know how 12 those kind of conversions go. 13 Q Anybody else at all? 14 A Not that I can think of. 15 Q Did you ever tell me that there was an 16 insurance policy issued by Sentinel that 17 potentially could satisfy that judgment? 18 MS. SMITH: Objection to form. 19 THE WITNESS: No. 20 BY MR. CLUBOK: 21 Q Did you ever tell Mr. Dondero that 22 there was an insurance policy issued by Sentinel 23 that could potentially satisfy that judgment? 24 A I didn't need to tell Mr. Dondero. He 25 was aware of it since inception.</p>
<p>1 A Correct. 2 Q Did you discuss withdrawal with them? 3 A I did not. 4 Q Did you discuss the UBS litigation with 5 them during -- during 2020, the last year of your 6 employment with Highland Capital Management? 7 A Yeah, I'm sure I did at some point. 8 Q Did you ever discuss with them what to 9 do about the judgment that UBS obtained? 10 A No. 11 Q Did you discuss with anybody -- strike 12 that. 13 Post bankruptcy and prior to 14 termination, did you discuss with anybody in the 15 world what to do about the judgment that UBS 16 obtained in New York? 17 A Yes. 18 Q Who did you discuss that with? 19 A Again, what time period? I'm sorry. 20 Q From the time of the bankruptcy until 21 the time you were terminated. 22 A You, Mr. Dondero, Mr. Seery, former 23 Judge Nelms, Mr. Dubel. I think that's pretty 24 much it. 25 Q So that's the entire list of</p>	<p>1 Q Did you ever tell Mr. Seery that there 2 was an insurance policy issued by Sentinel that 3 could potentially satisfy at least part of the 4 judgment that UBS obtained in New York? 5 MS. SMITH: Objection to form. 6 THE WITNESS: No. 7 BY MR. CLUBOK: 8 MR. CLUBOK: What was the form 9 objection? 10 MS. SMITH: Well, it calls for a legal 11 conclusion on what the insurance policy can do and 12 who it can pay out on. 13 MR. CLUBOK: Okay. 14 BY MR. CLUBOK: 15 Q Did you ever tell Mr. Seery anything 16 at all about the insurance policy that was issued 17 by Sentinel with respect to the UBS litigation in 18 New York? 19 A No. 20 Q Did you ever tell Mr. Nelms, Judge 21 Nelms anything at all about the insurance policy 22 that was issued by Sentinel with respect to the 23 UBS litigation in New York? 24 A No. 25 Q Did you ever tell Mr. Dubel anything</p>

Transcript of Scott Ellington

22 (85 to 88)

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<p>85</p> <p>1 at all about the insurance policy that had been</p> <p>2 issued by Sentinel with respect to the UBS</p> <p>3 litigation in New York?</p> <p>4 A No.</p> <p>5 Q Did you ever tell Mr. Leventon anything</p> <p>6 at all about the insurance policy that had been</p> <p>7 issued by Sentinel with respect to the UBS</p> <p>8 litigation in New York?</p> <p>9 A Mr. Leventon knew about it since</p> <p>10 inception.</p> <p>11 Q Mr. Leventon, since inception, knew</p> <p>12 that there was an insurance policy issued by</p> <p>13 Sentinel with respect to the UBS litigation</p> <p>14 pending in New York?</p> <p>15 A Yes.</p> <p>16 Q How did he know about that?</p> <p>17 MS. SMITH: Objection.</p> <p>18 THE WITNESS: He was part of the</p> <p>19 overall group of a dozen, if not 20, people inside</p> <p>20 of Highland that went through the process of</p> <p>21 approving the transaction, so he was around for</p> <p>22 the genesis, then quickly became not part of that</p> <p>23 process.</p> <p>24 BY MR. CLUBOK:</p> <p>25 Q What do you mean quickly became not</p>	<p>87</p> <p>1 Mr. Leventon because it was my idea.</p> <p>2 Q It was your idea to have Sentinel issue</p> <p>3 an insurance policy with respect to the UBS</p> <p>4 litigation that was then pending in New York;</p> <p>5 correct?</p> <p>6 A Yes.</p> <p>7 Q And when you initially had that idea,</p> <p>8 you discussed it fully with Mr. Leventon?</p> <p>9 A Well, I discussed with Mr. Leventon</p> <p>10 because the idea came from a matter called</p> <p>11 Cornerstone that Highland Capital Management, its</p> <p>12 funds brought against Nautic, a private equity</p> <p>13 advisor. And I had never heard of an ATE policy</p> <p>14 before. And we discovered in that litigation that</p> <p>15 they had made a payment out of their funds for a</p> <p>16 premium. And they had bought an ATE policy, and</p> <p>17 it produced a large settlement that the debtor and</p> <p>18 Highland Capital Management funds benefited from.</p> <p>19 Q And as a result of that, you discussed</p> <p>20 with Mr. Leventon the idea of purchasing an ATE</p> <p>21 policy from Sentinel with respect to the UBS</p> <p>22 litigation that was then pending in New York?</p> <p>23 A Mr. Leventon, Mr. Sevilla, Mr. Surgent</p> <p>24 were the initial people that I had the</p> <p>25 conversation with.</p>
<p>86</p> <p>1 part of that process?</p> <p>2 A It went to a process that was solely</p> <p>3 compliance and finance and some individuals from</p> <p>4 tax, if I remember correctly, and a couple of guys</p> <p>5 in accounting and training.</p> <p>6 Q When did it go to that?</p> <p>7 A After about the second and third week</p> <p>8 of discussing it as a possibility.</p> <p>9 Q And Mr. Leventon never had anything</p> <p>10 whatsoever to do with it after that?</p> <p>11 A Not that I recall.</p> <p>12 MS. SMITH: Objection to form.</p> <p>13 THE WITNESS: I mean, there were --</p> <p>14 there were literally two dozen people involved, if</p> <p>15 not more, so I don't -- I didn't really keep a</p> <p>16 leash on Mr. Leventon and his involvement, but I</p> <p>17 don't remember him being intimately involved.</p> <p>18 BY MR. CLUBOK:</p> <p>19 Q Did you ever mention that -- strike</p> <p>20 that.</p> <p>21 So you are saying Mr. Leventon -- the</p> <p>22 idea first came to have a insurance policy issued</p> <p>23 by Sentinel, Mr. Leventon was involved in that</p> <p>24 initial conversation; correct?</p> <p>25 A I had that initial conversation with</p>	<p>88</p> <p>1 Q All three of those equally in terms of</p> <p>2 being involved?</p> <p>3 A They were all sitting --</p> <p>4 MS. SMITH: Objection to form.</p> <p>5 THE WITNESS: They were all sitting in</p> <p>6 Mr. Surgent's office when I walked in and said is</p> <p>7 it possible to do an ATE like Nautic did?</p> <p>8 BY MR. CLUBOK:</p> <p>9 Q And this was the very first time that</p> <p>10 you ever mentioned this idea to get an ATE policy</p> <p>11 with respect to the UBS litigation to anyone?</p> <p>12 A Yes.</p> <p>13 Q And you mentioned that in Mr. Surgent's</p> <p>14 office to a group that included Mr. Leventon,</p> <p>15 Mr. Sevilla and Mr. Surgent?</p> <p>16 A That's my memory, yes.</p> <p>17 Q How long did you discuss it in the</p> <p>18 initial meeting?</p> <p>19 A Less than five minutes.</p> <p>20 Q Okay. And then after that, did you</p> <p>21 ever talk to Mr. Leventon again about the idea?</p> <p>22 A I'm sure I did, yes. Or in a larger</p> <p>23 group, because then it went through an approval</p> <p>24 process and that became run by compliance.</p> <p>25 Q And was Mr. Leventon aware that the</p>

Transcript of Scott Ellington

23 (89 to 92)

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<p style="text-align: right;">89</p> <p>1 insurance policy was actually issued, as far as</p> <p>2 you know?</p> <p>3 MS. SMITH: Objection to form.</p> <p>4 THE WITNESS: As far as I know.</p> <p>5 BY MR. CLUBOK:</p> <p>6 Q And was that because you discussed it</p> <p>7 with Mr. Leventon since that policy has been</p> <p>8 issued?</p> <p>9 A I'm sure that I have. I don't recall</p> <p>10 it specifically, but, you know, it's like every</p> <p>11 person in the firm knew.</p> <p>12 Q Every person in what firm knew?</p> <p>13 A In Highland Capital Management, I'd be</p> <p>14 surprised if anyone didn't know especially above a</p> <p>15 certain level because they were involved or their</p> <p>16 team members were involved.</p> <p>17 Q Sorry, what specifically did every</p> <p>18 person at Highland Capital Management above a</p> <p>19 certain level know that you are referring to?</p> <p>20 A That the ATE policy was being</p> <p>21 considered because it went through its normal</p> <p>22 process that involved almost every group in the</p> <p>23 firm.</p> <p>24 Q So, every single person who did an ATE</p> <p>25 policy was being considered.</p>	<p style="text-align: right;">91</p> <p>1 A I did not.</p> <p>2 Q And you never told Judge Nelms about</p> <p>3 it; correct?</p> <p>4 A I did not.</p> <p>5 Q You never told John Dubel about it;</p> <p>6 correct?</p> <p>7 A I did not.</p> <p>8 Q You never took any action to make sure</p> <p>9 that the court -- the bankruptcy court was aware</p> <p>10 about the ATE policy; correct?</p> <p>11 MS. SMITH: Objection to form.</p> <p>12 THE WITNESS: No, I did not.</p> <p>13 BY MR. CLUBOK:</p> <p>14 Q That's like one of those double</p> <p>15 negatives, so let me just ask it again: It's true</p> <p>16 that you never took any action to ensure that the</p> <p>17 bankruptcy court became aware of the ATE policy</p> <p>18 that had been taken out with respect to the UBS</p> <p>19 litigation in New York; correct?</p> <p>20 A Correct.</p> <p>21 Q Did you ever make any effort to collect</p> <p>22 on that policy?</p> <p>23 A I --</p> <p>24 MS. SMITH: Objection to form.</p> <p>25 THE WITNESS: No.</p>
<p style="text-align: right;">90</p> <p>1 And roughly when was that?</p> <p>2 A Several months before it was put in</p> <p>3 place.</p> <p>4 Q And how many people knew it was</p> <p>5 actually put in place?</p> <p>6 A I would say the entire group that was</p> <p>7 part of the process.</p> <p>8 Q So virtually every single senior person</p> <p>9 at Highland Capital Management knew that the ATE</p> <p>10 policy had been put in place?</p> <p>11 A That's my understanding. I'd be</p> <p>12 shocked if they didn't. Because, again, we're</p> <p>13 talking two dozen people involved in the process.</p> <p>14 Q Right. But, as far as you --</p> <p>15 You have no knowledge that Mr. Seery was</p> <p>16 ever made aware of this; correct?</p> <p>17 A I-- I don't --</p> <p>18 MS. SMITH: Objection to form.</p> <p>19 THE WITNESS: I don't know if Mr. Seery</p> <p>20 was made aware of it or not.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q You -- you certainly never told</p> <p>23 Mr. Seery about the ATE policy during your</p> <p>24 employment at Highland Capital Management;</p> <p>25 correct?</p>	<p style="text-align: right;">92</p> <p>1 MR. CLUBOK: Okay. I think this is a</p> <p>2 good time for a break.</p> <p>3 THE WITNESS: Okay.</p> <p>4 THE VIDEOGRAPHER: We're going off the</p> <p>5 record at 12:05 p.m. Eastern time.</p> <p>6 (Recess taken 12:05 p.m. to 12:15 p.m.)</p> <p>7 THE VIDEOGRAPHER: We're going back on</p> <p>8 the record at 12:21 p.m. Eastern Time.</p> <p>9 BY MR. CLUBOK:</p> <p>10 Q Okay, Mr. Ellington, we've been talking</p> <p>11 about an entity that I referred to as Sentinel,</p> <p>12 and I believe there's some different entities with</p> <p>13 Sentinel in their name, but when we've been</p> <p>14 talking about Sentinel, have you understood me to</p> <p>15 be referring to Sentinel Reinsurance Limited?</p> <p>16 A Yes, I believe that is the main entity,</p> <p>17 but I'd have to see an org chart. I don't know</p> <p>18 what it looks like now.</p> <p>19 Q And you recall it is a fairly</p> <p>20 complicated structure with lots of different</p> <p>21 entities and subs and pass-through entities and so</p> <p>22 forth?</p> <p>23 MS. SMITH: Objection to form.</p> <p>24 THE WITNESS: That's my understanding.</p> <p>25 BY MR. CLUBOK:</p>

Transcript of Scott Ellington

24 (93 to 96)

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<p>93</p> <p>1 Q And -- and if I talk about it -- if I</p> <p>2 generally refer to it as Sentinel, will you</p> <p>3 understand it to be the collective organization,</p> <p>4 unless it's necessary to identify a specific sub</p> <p>5 or a specific entity; is that okay?</p> <p>6 A Yeah, yeah, that's fine with me. And</p> <p>7 if I get into any specificity, I may need to see</p> <p>8 an org chart.</p> <p>9 Q When was Sentinel formed, roughly?</p> <p>10 A My best recollection is 2012.</p> <p>11 Q What was the purpose of forming</p> <p>12 Sentinel, as far as you understood?</p> <p>13 A To create a reinsurer.</p> <p>14 Q For whom?</p> <p>15 A It was -- the instruction of</p> <p>16 Mr. Dondero was to make every attempt to originate</p> <p>17 and structure a Cayman-based reinsurer.</p> <p>18 Q So the idea for forming Sentinel, as</p> <p>19 far as you know, was Jim Dondero's.</p> <p>20 A Yes.</p> <p>21 Q And is he -- did he -- is he the one</p> <p>22 who explained to you the purpose behind forming</p> <p>23 Sentinel?</p> <p>24 A Yes.</p> <p>25 Q Was there anyone else in that</p>	<p>95</p> <p>1 interest in Sentinel if it was established.</p> <p>2 A No.</p> <p>3 Q When did he -- did he ever speak to you</p> <p>4 about the economics of Sentinel?</p> <p>5 A When you mean the economics, who would</p> <p>6 ultimately the potential beneficial owners?</p> <p>7 Q Yes.</p> <p>8 A At a much later date after it was</p> <p>9 established?</p> <p>10 Q Roughly when?</p> <p>11 A I would say probably six to nine</p> <p>12 months, if not a year, after it was established.</p> <p>13 I really can't remember.</p> <p>14 Q And what was the nature of that</p> <p>15 conversation, as best you can remember?</p> <p>16 A That because me and my team had been</p> <p>17 able to pull it off, that I would have some</p> <p>18 beneficial ownership.</p> <p>19 Q Because you were able to pull off</p> <p>20 establishing this full-service reinsurer?</p> <p>21 A Yes.</p> <p>22 Q And when you say "some beneficial</p> <p>23 ownership" ultimately you obtained about</p> <p>24 30 percent; correct?</p> <p>25 A Again, or entities somehow related to</p>
<p>94</p> <p>1 conversation when he initially told you about it?</p> <p>2 A I don't recall. I think it was just me</p> <p>3 and him.</p> <p>4 Q And what -- what else did he tell you</p> <p>5 about the kind of business that he expected</p> <p>6 Sentinel to engage in?</p> <p>7 A He wanted Sentinel to be a</p> <p>8 full-serviced reinsurer, not just a captive.</p> <p>9 Q Why?</p> <p>10 A Because he had attempted to do that</p> <p>11 with Gov Re, and due to regulatory issues, again,</p> <p>12 beyond my knowledge, he thought that Cayman was a</p> <p>13 better place to domicile a new reinsurer.</p> <p>14 Q Was the idea that -- when you say --</p> <p>15 when you say a full-service reinsurer, not just a</p> <p>16 captive, what's the distinction that you</p> <p>17 understood him to be making?</p> <p>18 A That captive reinsurers serve a limited</p> <p>19 set of counter-parties and ensure a limited set</p> <p>20 where a full service, it serves any and all</p> <p>21 potential parties.</p> <p>22 Q And did he talk to you about the</p> <p>23 economics during this initial conversation?</p> <p>24 A Meaning what?</p> <p>25 Q Meaning who would have the economic</p>	<p>96</p> <p>1 me.</p> <p>2 Q At what point did he tell you that</p> <p>3 that's the percentage you would get?</p> <p>4 A I don't recall.</p> <p>5 Q Well, roughly, how long after it was</p> <p>6 formed before --</p> <p>7 A I don't know. I'm sorry, I didn't let</p> <p>8 you finish your question.</p> <p>9 Q Sure. Was it, you know, within the</p> <p>10 first year that it was formed? Was it five years</p> <p>11 later? Just your best estimate.</p> <p>12 A Oh, within the first year. That's a</p> <p>13 very long due diligence period from the regulator.</p> <p>14 Q So within the first year of Sentinel</p> <p>15 being formed, it was established that you would,</p> <p>16 at least indirectly, if not directly, have a</p> <p>17 roughly 30 percent economic interest in Sentinel;</p> <p>18 correct?</p> <p>19 A Correct.</p> <p>20 Q And Mr. Dondero would retain the other</p> <p>21 roughly 70 percent economic interest, as far as</p> <p>22 you understood; correct?</p> <p>23 A As far as --</p> <p>24 MS. SMITH: Objection to form.</p> <p>25 THE WITNESS: As far as I understood,</p>

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Transcript of Scott Ellington

29 (113 to 116)

Conducted on July 29, 2021

<p>113</p> <p>1 A I believe so, but I'm not certain.</p> <p>2 I cant remember, but I believe se may have been.</p> <p>3 Q And why was she there?</p> <p>4 A She was along on the trip to do other</p> <p>5 business with us, and she attended the meeting.</p> <p>6 Q What business was Ms. Irving doing that</p> <p>7 was unrelated to Sentinel?</p> <p>8 A Relative to SAS Management.</p> <p>9 Q So Ms. Irving was in the Caymans on</p> <p>10 that trip only with respect to business on behalf</p> <p>11 of SAS?</p> <p>12 A Yes.</p> <p>13 Q But you brought her along to this</p> <p>14 meeting with CIMA that was specifically focused on</p> <p>15 Sentinel?</p> <p>16 A Yes.</p> <p>17 Q Why?</p> <p>18 A Because she asked if she should come</p> <p>19 and listen, and I said sure.</p> <p>20 Q Why?</p> <p>21 A I guess she had a curiosity. I don't</p> <p>22 know.</p> <p>23 Q Did you report to anyone about this</p> <p>24 meeting who was not at the meeting?</p> <p>25 A No.</p>	<p>115</p> <p>1 you?</p> <p>2 A I did not speak at the meeting.</p> <p>3 Q Who did?</p> <p>4 A Mostly Cayman counsel. I remember Jan</p> <p>5 discussing the portfolio, and potentially</p> <p>6 Mr. DiOrio. I don't recall if he spoke or not.</p> <p>7 Q Did anyone give any details about what</p> <p>8 had happened at the trial?</p> <p>9 A No.</p> <p>10 Q Did anyone talk about the merits of the</p> <p>11 UBS litigation in any way?</p> <p>12 A No.</p> <p>13 Q At the time -- now, you previously said</p> <p>14 a number of times that you believed that the</p> <p>15 defendants were going to lose that litigation even</p> <p>16 before the verdict came out; right?</p> <p>17 A Yes, I did.</p> <p>18 Q And in fact, you believed there was a</p> <p>19 decent chance that the defendants would get hit</p> <p>20 with substantial portion, if not all, of the</p> <p>21 billion dollars that was being sought; correct?</p> <p>22 A I didn't have an -- idea as to damages,</p> <p>23 but I thought the -- there was a likelihood that</p> <p>24 the defendants would lose.</p> <p>25 Q And you thought there was a likelihood</p>
<p>114</p> <p>1 Q So, no one other than you, Mr. Sevilla,</p> <p>2 Mr. DiOrio, Jan, Sentinel's counsel and Ms. Irving</p> <p>3 were informed about this meeting to the best of</p> <p>4 your knowledge?</p> <p>5 A To my knowledge, that's the only people</p> <p>6 that were informed, yes.</p> <p>7 Q And at this meeting, did you talk about</p> <p>8 the prospects -- this is after the trial had</p> <p>9 already occurred; right?</p> <p>10 A I believe so, yeah.</p> <p>11 Q And so for example, at the trial, the</p> <p>12 court ruled from the bench that -- in a way that</p> <p>13 disallowed one of the defendant's arguments</p> <p>14 specifically with respect to offset for hedging.</p> <p>15 Do you remember that?</p> <p>16 A I do.</p> <p>17 Q What's that?</p> <p>18 A Yes, I do.</p> <p>19 Q Did you tell CIMA about that</p> <p>20 development at trial?</p> <p>21 A I did not tell CIMA anything about the</p> <p>22 developments at trial.</p> <p>23 Q Did they ask?</p> <p>24 A No, they did not.</p> <p>25 Q Who spoke at the meeting, other than</p>	<p>116</p> <p>1 that the damages would be substantial, at least in</p> <p>2 the several hundred million dollar range; correct?</p> <p>3 A Again, I had no insight into what</p> <p>4 damages or how they would be calculated, but I</p> <p>5 thought the defendants would lose.</p> <p>6 Q And you said a number of times that it</p> <p>7 didn't surprise you at all about the size or the</p> <p>8 magnitude of the damages verdict; correct?</p> <p>9 A Correct.</p> <p>10 Q And you had warned Mr. Dondero, in</p> <p>11 words or substance, that this was likely to occur</p> <p>12 before the verdict came; correct?</p> <p>13 A Yes.</p> <p>14 Q Did you ever communicate those beliefs</p> <p>15 about the likelihood of a large judgment being</p> <p>16 issued against the defendants to anybody</p> <p>17 affiliated with Sentinel?</p> <p>18 A Myself, no.</p> <p>19 Q Did you -- are you aware of those</p> <p>20 beliefs about the likelihood of a large judgment</p> <p>21 being issued against the defendants in the UBS</p> <p>22 litigation being communicated to anyone affiliated</p> <p>23 with Sentinel?</p> <p>24 A Am I personally aware of it? No.</p> <p>25 Q Were you made -- did you get any --</p>

Transcript of Scott Ellington

30 (117 to 120)

Conducted on July 29, 2021

<p style="text-align: right;">117</p> <p>1 strike that.</p> <p>2 Did you ever come to believe that</p> <p>3 anyone at Sentinel was being advised as to the</p> <p>4 likelihood of a significant judgment coming out of</p> <p>5 the trial?</p> <p>6 A Yes.</p> <p>7 Q Describe the nature of that belief and</p> <p>8 the circumstances.</p> <p>9 A I believe, and I was told anecdotally,</p> <p>10 that Cayman counsel was following the matter very</p> <p>11 closely and updating the directors in their</p> <p>12 capacity.</p> <p>13 Q And Cayman counsel being Simone?</p> <p>14 A Yes. And I believe there may have been</p> <p>15 other Cayman counsel that Sentinel directors</p> <p>16 retained, but I don't know that.</p> <p>17 Q Who told you that Cayman counsel was</p> <p>18 following it very closely?</p> <p>19 A Simone.</p> <p>20 Q And -- but you never saw her</p> <p>21 communicate -- strike that.</p> <p>22 You never were copied on any</p> <p>23 communication she had with the Sentinel directors</p> <p>24 about the merits of the litigation?</p> <p>25 A Never.</p>	<p style="text-align: right;">119</p> <p>1 objection for that question?</p> <p>2 MS. SMITH: I'm not going to explain</p> <p>3 all of my objections.</p> <p>4 MR. CLUBOK: All right. Okay. I have</p> <p>5 a right to ask, and if you don't have a -- okay.</p> <p>6 I have a right to correct the form objection. So</p> <p>7 if there is a form objection, I have the right to</p> <p>8 ask you what the basis is, so I can correct it if</p> <p>9 it's -- if it's necessary.</p> <p>10 Are you going to tell me anything more</p> <p>11 than just objection to form?</p> <p>12 MS. SMITH: Okay. Well, any other</p> <p>13 human in the world is fake.</p> <p>14 BY MR. CLUBOK:</p> <p>15 Q Okay. Mr. Ellington, when I say any</p> <p>16 other human in the world, are you confused that I</p> <p>17 might be talking about animals or something;</p> <p>18 nonhuman -- nonhumans?</p> <p>19 A Not confused. But it's certainly very</p> <p>20 difficult to remember what I said to every human</p> <p>21 in the world, well over a period of five years.</p> <p>22 Q Sure. But between August of 2019, when</p> <p>23 you met in the Caymans with CIMA and the</p> <p>24 discussions you had with Mr. Leventon that you've</p> <p>25 described in the fall of 2020, did you discuss the</p>
<p style="text-align: right;">118</p> <p>1 Q And you don't know anything more than</p> <p>2 she assured you that the Sentinel directors were</p> <p>3 being closely informed?</p> <p>4 A A general statement as we were walking</p> <p>5 from the car into CIMA.</p> <p>6 Q So she told you on the way in words to</p> <p>7 the effect that the directors know all about the</p> <p>8 events of the litigation and that prospects?</p> <p>9 A Yes.</p> <p>10 MS. SMITH: Objection, form.</p> <p>11 THE WITNESS: Yes.</p> <p>12 BY MR. CLUBOK:</p> <p>13 Q Other than that, were you ever made</p> <p>14 aware in any way of what extent to which the</p> <p>15 directors at Sentinel were being kept apprized of</p> <p>16 the prospects for the New York litigation against</p> <p>17 UBS?</p> <p>18 A No.</p> <p>19 Q And in between that meeting in August</p> <p>20 of '19 and the meeting in the fall with Isaac</p> <p>21 Leventon where you described, did you ever discuss</p> <p>22 the ATE policy with any other human in the world?</p> <p>23 MS. SMITH: Objection to form.</p> <p>24 THE WITNESS: Not that I recall.</p> <p>25 MR. CLUBOK: And what's the form</p>	<p style="text-align: right;">120</p> <p>1 ATE policy with anybody else at all that you can</p> <p>2 think of, sitting here today?</p> <p>3 A Not that I recall.</p> <p>4 Q Did Mr. Leventon ever seek out your</p> <p>5 advice as to whether or not to disclose the</p> <p>6 existence of the policy to the independent</p> <p>7 directors that were appointed to manage Highland's</p> <p>8 affairs in the bankruptcy?</p> <p>9 A Not that I specifically recall.</p> <p>10 Q Did Mr. Leventon ever seek out your</p> <p>11 advice as to whether or not to disclose the</p> <p>12 existence of the ATE policy to the Pachulski firm</p> <p>13 or any lawyer that was representing Highland in</p> <p>14 connection with the bankruptcy?</p> <p>15 A Not that I recall.</p> <p>16 Q Do you recall ever discussing with</p> <p>17 Mr. Leventon whether or not the ATE policy should</p> <p>18 be disclosed in connection with the bankruptcy?</p> <p>19 A No, not Mr. Leventon.</p> <p>20 Q With anyone?</p> <p>21 A Maybe I didn't understand your</p> <p>22 question. I'm sorry.</p> <p>23 Could you ask -- could you please ask</p> <p>24 it again?</p> <p>25 Q Did you ever recall discussing with</p>

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Transcript of Scott Ellington

34 (133 to 136)

Conducted on July 29, 2021

<p>133</p> <p>1 THE WITNESS: I generally knew that</p> <p>2 they were -- they were looking at the assets of</p> <p>3 those entities, yes.</p> <p>4 BY MR. CLUBOK:</p> <p>5 Q And you knew that the trigger for the</p> <p>6 ATE policy had already occurred as of the date of</p> <p>7 the judgment?</p> <p>8 MS. SMITH: Objection to form.</p> <p>9 BY MR. CLUBOK:</p> <p>10 Q Correct?</p> <p>11 A I disagree.</p> <p>12 Q Why do you disagree with that?</p> <p>13 A It was intimated to me that the trigger</p> <p>14 would be a perfection of a judgment from New York</p> <p>15 to the Cayman Islands.</p> <p>16 Q Who intimated that to you?</p> <p>17 A CIMA.</p> <p>18 MS. SMITH: Objection.</p> <p>19 BY MR. CLUBOK:</p> <p>20 Q CIMA did?</p> <p>21 A Yes.</p> <p>22 Q When?</p> <p>23 A In the meeting aforementioned in August</p> <p>24 of '19.</p> <p>25 Q So it was intimated to you that until</p>	<p>135</p> <p>1 would also trigger the policy; correct?</p> <p>2 MS. SMITH: Objection to form.</p> <p>3 THE WITNESS: I don't have the</p> <p>4 expertise to say whether that triggers a policy or</p> <p>5 not. That's not a determination I could make.</p> <p>6 BY MR. CLUBOK:</p> <p>7 Q Isn't it true that Mr. Leventon at some</p> <p>8 point consulted with you about whether or not he</p> <p>9 should disclose the policy to either Mr. Seery or</p> <p>10 the lawyers at the Pachulski firm?</p> <p>11 A I don't know.</p> <p>12 MS. SMITH: Objection to form.</p> <p>13 BY MR. CLUBOK:</p> <p>14 Q Sorry, can you answer the -- I think</p> <p>15 your answer came in over Ms. Smith's objection, so</p> <p>16 I'll ask the question again.</p> <p>17 Is it true that Mr. Leventon at some</p> <p>18 point consulted with you about whether or not he</p> <p>19 should disclose the ATE policy to either Mr. Seery</p> <p>20 or the lawyers at the Pachulski firm?</p> <p>21 A I don't recall.</p> <p>22 Q Between -- other than this meeting with</p> <p>23 CIMA and the discussion you had with Mr. Leventon,</p> <p>24 did you ever discuss the ATE policy with anyone</p> <p>25 else in the world since the bankruptcy that you</p>
<p>134</p> <p>1 the judgment was perfected in the Cayman Islands,</p> <p>2 there was no trigger for paying ATE?</p> <p>3 A Yes.</p> <p>4 Q Who specifically intimated that to you?</p> <p>5 A CIMA.</p> <p>6 Q Who, name of a human being.</p> <p>7 A I don't know the human being's name.</p> <p>8 There was five people from CIMA in the room. It</p> <p>9 was three years ago.</p> <p>10 Q When you say it was intimated, what do</p> <p>11 you mean?</p> <p>12 A They said there is not a claim on the</p> <p>13 policy to perfect the judgment here.</p> <p>14 Q Was it a man or a woman who said that?</p> <p>15 A It was a man.</p> <p>16 Q Was it the man who was the -- was there</p> <p>17 one person who was the principal spokesperson for</p> <p>18 CIMA at this meeting?</p> <p>19 A Yes.</p> <p>20 Q And you just don't remember his name?</p> <p>21 A No.</p> <p>22 Q Did you have any documents, records of</p> <p>23 this meeting?</p> <p>24 A No.</p> <p>25 Q And now if there is a settlement, that</p>	<p>136</p> <p>1 can recall other than --</p> <p>2 A Not that I recall.</p> <p>3 Q -- other than Ms. Smith?</p> <p>4 A Not that I recall.</p> <p>5 Q Did you ever discuss -- when was the</p> <p>6 last time you spoke to Mr. Dondero about the ATE</p> <p>7 policy?</p> <p>8 A I would say at least two years.</p> <p>9 Q And what was the nature of that</p> <p>10 conversation?</p> <p>11 A I believe that Mr. Dondero asked me if</p> <p>12 it was still in place.</p> <p>13 Q Roughly when was that?</p> <p>14 A I would say sometime in 2018.</p> <p>15 That's -- that's my best guess.</p> <p>16 Q Was it before or after the trial?</p> <p>17 A Before.</p> <p>18 Q So before the trial, he asked you if</p> <p>19 the ATE policy was still in place?</p> <p>20 A Yes.</p> <p>21 Q And what did you say?</p> <p>22 A I said as far as I know, yes.</p> <p>23 Q And after the trial, but before the</p> <p>24 judgment, did you ever speak with Mr. Dondero</p> <p>25 again about the ATE policy?</p>

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Transcript of Scott Ellington

35 (137 to 140)

Conducted on July 29, 2021

<p>137</p> <p>1 A Not that I recall.</p> <p>2 Q And after the judgment, did you ever</p> <p>3 talk to Mr. Dondero about how the ATE policy could</p> <p>4 somehow be used to satisfy the judgment or settle</p> <p>5 the case?</p> <p>6 A No.</p> <p>7 MS. SMITH: Objection to form.</p> <p>8 THE WITNESS: Not that I recall.</p> <p>9 BY MR. CLUBOK:</p> <p>10 Q Right before the bankruptcy, you tried</p> <p>11 to settle the claims against CDO Fund, SOHC and</p> <p>12 HFP; correct?</p> <p>13 A Yes, I approached you to try to</p> <p>14 structure a settlement.</p> <p>15 Q And you claimed at the time that those</p> <p>16 funds were ghost funds, in your words; correct?</p> <p>17 A Yes.</p> <p>18 Q And you -- basically, you said, in</p> <p>19 substance, though, they had no assets left, but if</p> <p>20 there was a settlement, that Mr. Dondero could</p> <p>21 come up with funds from some other source to</p> <p>22 satisfy a relatively small settlement on behalf of</p> <p>23 those funds; is that true?</p> <p>24 A On behalf of all defendants, yes.</p> <p>25 Q Well, you specifically talked about --</p>	<p>139</p> <p>1 A Absolutely. It is my fault, and there</p> <p>2 is some slight delay on my end, so I think that's</p> <p>3 part of the problem. I apologize.</p> <p>4 Q That's okay. I appreciate -- again,</p> <p>5 like I said, I appreciate your effort to just</p> <p>6 answer these questions clearly, but you overshot</p> <p>7 that by a scooch.</p> <p>8 A I apologize to both you and Ms. Smith</p> <p>9 and the court reporter. I'm not trying to do that</p> <p>10 at all.</p> <p>11 Q No, no, I understand. I understand.</p> <p>12 A Yeah.</p> <p>13 Q So let me just ask it one more time.</p> <p>14 You never disclosed in the course of</p> <p>15 any settlement discussions with UBS's counsel that</p> <p>16 there was an ATE policy that could satisfy a</p> <p>17 potential settlement of the claims against CDO</p> <p>18 Fund, SOHC and HFP; correct?</p> <p>19 A The only person I discussed it with was</p> <p>20 you, and, no, I did not disclose that.</p> <p>21 Q I apologize if I've asked this earlier:</p> <p>22 Did Sentinel ever have a shared services agreement</p> <p>23 with Highland Capital Management?</p> <p>24 A Not that I'm aware of.</p> <p>25 Q Does it have one today with Skyview?</p>
<p>138</p> <p>1 you specifically talked about settling the</p> <p>2 non-HCM-related claims for a relatively small</p> <p>3 amount and then separately agreeing to an allowed</p> <p>4 claim for HCM; isn't that true?</p> <p>5 A That was one of the options you and I</p> <p>6 discussed. We discussed many options.</p> <p>7 Q And you never disclosed the fact that</p> <p>8 there was an ATE policy that could satisfy a</p> <p>9 potential settlement of the claims against CDO</p> <p>10 Fund, SOHC and HFP; correct?</p> <p>11 A Correct.</p> <p>12 -- (overspeaking) --</p> <p>13 MS. SMITH: Objection, form.</p> <p>14 BY MR. CLUBOK:</p> <p>15 Q I want to make sure the court reporter</p> <p>16 got the -- okay. There was simultaneous speakers,</p> <p>17 so I don't think she heard your answer even though</p> <p>18 the audio will capture it.</p> <p>19 And do me a favor, Mr. Ellington.</p> <p>20 Since Ms. Smith is objecting sometimes, if you</p> <p>21 could -- I really appreciate you giving answers</p> <p>22 quickly on the one hand. On the other hand, if</p> <p>23 you could just take one more beat so that you are</p> <p>24 not talking over her as she's making her</p> <p>25 objections, that will be helpful.</p>	<p>140</p> <p>1 A Not that I'm aware of.</p> <p>2 Q Does it have a client relationship with</p> <p>3 Skyview?</p> <p>4 THE WITNESS: Not that I'm --</p> <p>5 MS. SMITH: Object to the form.</p> <p>6 THE WITNESS: Sorry, not that I'm aware</p> <p>7 of.</p> <p>8 BY MR. CLUBOK:</p> <p>9 Q Let's turn to what's behind tab 2,</p> <p>10 Exhibit 50.</p> <p>11 I think we do have here -- we've asked</p> <p>12 you before about the ownership interest, and you</p> <p>13 said you had seen some documents. Hopefully this</p> <p>14 will help refresh your recollection.</p> <p>15 A You want me to go ahead and open the</p> <p>16 envelope, Mr. Clubok?</p> <p>17 Q Yeah, open Exhibit 50. Exhibit 50 --</p> <p>18 while you're opening it, I'll just describe -- is</p> <p>19 an email exchange that starts with an email from</p> <p>20 Mr. Sevilla to SEI-IS-Highland and that appears to</p> <p>21 be to someone named Daniel Bowen, and there is</p> <p>22 some back and forth that continues through the</p> <p>23 email chain between these two individuals.</p> <p>24 Do you have Exhibit 50 in front of you?</p> <p>25 A I do.</p>

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Transcript of Scott Ellington

39 (153 to 156)

Conducted on July 29, 2021

<p>153</p> <p>1 believe. Let me see.</p> <p>2 Q You should.</p> <p>3 A I think I do. Sorry. Yes, I have it.</p> <p>4 May I open it now?</p> <p>5 Q Yeah, if you could open it, please.</p> <p>6 And while you're opening it, I will represent that</p> <p>7 Exhibit 26 was attached to Exhibit 50 in the</p> <p>8 original email.</p> <p>9 And Exhibit 26 shows at the top, "The</p> <p>10 fund, Multi Strat Credit Fund, with an investor</p> <p>11 Sentinel Reinsurance."</p> <p>12 Do you see that?</p> <p>13 A Investor Sentinel Reinsurance Limited,</p> <p>14 yes.</p> <p>15 Q And it talks about the beneficial</p> <p>16 owners of Sentinel Reinsurance being 70 percent</p> <p>17 Patton Limited and 30 percent Minutes Limited;</p> <p>18 correct?</p> <p>19 A Yes.</p> <p>20 Q And, in turn, under Patton, it has the</p> <p>21 breakdown of various beneficial ownerships. But</p> <p>22 the only individual identified is James Dondero.</p> <p>23 Do you see that?</p> <p>24 A I do.</p> <p>25 Q And then with respect to the Mimic</p>	<p>155</p> <p>1 MS. SMITH: Objection to form.</p> <p>2 Answered.</p> <p>3 THE WITNESS: I can't say whether it is</p> <p>4 or isn't without the documents.</p> <p>5 BY MR. CLUBOK:</p> <p>6 Q My question is -- my simple question is</p> <p>7 whether you can say it isn't.</p> <p>8 Do you -- as you sit here today,</p> <p>9 looking at this, do you -- do you know any reason</p> <p>10 why this would be inaccurate?</p> <p>11 A Without the documents, I cannot say</p> <p>12 it's inaccurate.</p> <p>13 Q What further documents would you need</p> <p>14 to know whether or not this is accurate?</p> <p>15 A Well, I would have to see the documents</p> <p>16 of all these entities.</p> <p>17 Q Okay. Did you ever contribute capital</p> <p>18 to Sentinel?</p> <p>19 A Excuse me?</p> <p>20 Q Did you ever contribute any capital to</p> <p>21 Sentinel?</p> <p>22 A Did I ever contribute any capital to</p> <p>23 Sentinel? No, I do not believe so.</p> <p>24 Q Did you ever -- unless -- and when I</p> <p>25 say Sentinel, I mean Sentinel Reinsurance Limited.</p>
<p>154</p> <p>1 Holdings it says, 100 beneficial ownership,</p> <p>2 Montage Holding Limited which, in turn,</p> <p>3 100 percent beneficial ownership AHL Holdings LP,</p> <p>4 which, in turn, has 99 percent beneficial</p> <p>5 ownership, Elderflower Limited, which, in turn, is</p> <p>6 100 percent beneficial ownership, Scott Ellington,</p> <p>7 you. Correct?</p> <p>8 A I see that, yes.</p> <p>9 Q And does that -- seeing this, does that</p> <p>10 confirm that at the time of the ATE policy, you</p> <p>11 had close to or approximately 30 percent</p> <p>12 beneficial ownership ultimately in Sentinel?</p> <p>13 MS. SMITH: Objection to form.</p> <p>14 THE WITNESS: That's what this document</p> <p>15 seems to suggest. But I don't know where this</p> <p>16 information came from to SEI. I don't know.</p> <p>17 BY MR. CLUBOK:</p> <p>18 Q Do you have any reason to believe that</p> <p>19 it's inaccurate?</p> <p>20 A I'd have to see the org chart at the</p> <p>21 time that this was generated. I just don't</p> <p>22 remember.</p> <p>23 Q Do you -- as you sit here today, do you</p> <p>24 have any reason to believe that this would be</p> <p>25 inaccurate information?</p>	<p>156</p> <p>1 Did you ever put any investment or</p> <p>2 funds into Sentinel Reinsurance Limited?</p> <p>3 A I don't know.</p> <p>4 Q You don't know?</p> <p>5 A I don't know. It could have been</p> <p>6 capitalized in a way that I -- I personally did</p> <p>7 not, no.</p> <p>8 Q Let's look at what's been marked as</p> <p>9 Exhibit 77.</p> <p>10 MR. CLUBOK: And Nate, when I call</p> <p>11 these out, I know Mr. Ellington's got a hard copy,</p> <p>12 but can you also put it up on the screen to make</p> <p>13 it easy. We'll see it both ways.</p> <p>14 REMOTE TECHNICIAN: Yes, sir. That was</p> <p>15 77?</p> <p>16 MR. CLUBOK: Yes, tab four.</p> <p>17 BY MR. CLUBOK:</p> <p>18 Q This is a document that says, "Scott</p> <p>19 Ellington Schedule of Certain Cash and Investments</p> <p>20 and Accountant's Compilation Report, October 31st,</p> <p>21 2018." Do you see that?</p> <p>22 A I do.</p> <p>23 BY MR. CLUBOK:</p> <p>24 Q And the second page references an</p> <p>25 entity called Seville Dodge and Company; do you</p>

Transcript of Scott Ellington

40 (157 to 160)

Conducted on July 29, 2021

<p>157</p> <p>1 see that?</p> <p>2 A I do.</p> <p>3 Q Who are they?</p> <p>4 A An accounting firm.</p> <p>5 Q And they're your accounting firm.</p> <p>6 A They assist along with outside counsel</p> <p>7 in tax preparation.</p> <p>8 Q Okay. And in the end of 2018, they</p> <p>9 compiled a schedule of certain cash and</p> <p>10 investments of you as of October 31st, 2018;</p> <p>11 correct?</p> <p>12 A That seems to be what 7359 is.</p> <p>13 Q Why did they do that?</p> <p>14 A I was applying for a Cayman banking</p> <p>15 license, and this was requested by CIMA.</p> <p>16 Q Okay. And so you had to make sure you</p> <p>17 provided accurate information to CIMA?</p> <p>18 A Yes.</p> <p>19 Q And did Sevilla -- do you trust that</p> <p>20 Sevilla accurately reported your cash and</p> <p>21 investments as of October 31st, 2018?</p> <p>22 A I trust that they --</p> <p>23 MS. SMITH: Object to form.</p> <p>24 THE WITNESS: -- did their best to</p> <p>25 accurately report, yes.</p>	<p>159</p> <p>1 other professionals did the valuation.</p> <p>2 Q Well, you caused this to be prepared so</p> <p>3 that you could submit it to CIMA to get a banking</p> <p>4 license; right?</p> <p>5 A At the request of CIMA, yes.</p> <p>6 Q Understood. And did you -- are you</p> <p>7 reasonably certain that it was accurate?</p> <p>8 MS. SMITH: Objection to form.</p> <p>9 THE WITNESS: I -- I don't have</p> <p>10 enough -- I don't have enough expertise to</p> <p>11 understand these type of valuations. That's why I</p> <p>12 hire professionals to do it.</p> <p>13 BY MR. CLUBOK:</p> <p>14 Q Yeah, but do you -- did you take care</p> <p>15 to ensure that you hired a professional that you</p> <p>16 can rely on and that you provided that</p> <p>17 professional with all the information reasonably</p> <p>18 necessary to be accurate to the best of your</p> <p>19 ability?</p> <p>20 A Myself or other -- those are other</p> <p>21 entities because I couldn't provide information on</p> <p>22 Sentinel. The independent directors would have to</p> <p>23 do that.</p> <p>24 Q Did you take any affirmative obligation</p> <p>25 to do everything reasonably possible to ensure</p>
<p>158</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q And on the second page it says,</p> <p>3 "Investment in Sentinel Reinsurance Limited</p> <p>4 11.8 million."</p> <p>5 Do you see that?</p> <p>6 A Yes, I do. And Sentinel Reinsurance</p> <p>7 Limited, yes.</p> <p>8 Q Right. And does that refresh your</p> <p>9 recollection that you invested 11.8 million in</p> <p>10 Sentinel Reinsurance Limited?</p> <p>11 A No, it does not. I don't -- I don't</p> <p>12 know what that's referencing.</p> <p>13 I never invested personally \$11 million</p> <p>14 in anything?</p> <p>15 Q Was that -- was that a valuation of</p> <p>16 your investment in Sentinel Reinsurance at the</p> <p>17 time?</p> <p>18 A That's what my belief is, yes.</p> <p>19 Q And what was -- where -- did you -- did</p> <p>20 you ensure that Sevilla Dodge and Company had</p> <p>21 accurate information so they could make an</p> <p>22 accurate representation of the value of your</p> <p>23 investment in Sentinel Reinsurance at the time?</p> <p>24 A Yes. But, I mean, I didn't provide any</p> <p>25 valuation to them. They -- I presume them or</p>	<p>160</p> <p>1 that the information that's set forth in Exhibit</p> <p>2 77 is as accurate as possible?</p> <p>3 A Yes, I provided any information I had</p> <p>4 access to and requested that other entities that</p> <p>5 were controlled by directors or others would</p> <p>6 provide the information to Sevilla Dodge.</p> <p>7 Q And to the best of your -- do you feel</p> <p>8 comfortable relying upon the work of Sevilla Dodge</p> <p>9 and Company as of the date of Exhibit 77 as</p> <p>10 reflected here?</p> <p>11 A They are a reputable accounting firm</p> <p>12 with highly trained professionals, so I relied on</p> <p>13 their expertise.</p> <p>14 Q And why would Matt DiOrio have a copy</p> <p>15 of this?</p> <p>16 A I don't know.</p> <p>17 MS. SMITH: Objection to form.</p> <p>18 BY MR. CLUBOK:</p> <p>19 Q Did you share this information</p> <p>20 intentionally with Matt DiOrio?</p> <p>21 A Not that I recall, no.</p> <p>22 Q Does -- as far as you know is Matt --</p> <p>23 when Matt DiOrio was at Highland, did he have any</p> <p>24 need, as far as you know, to have access to this</p> <p>25 document based on what you understood his job to</p>

Transcript of Scott Ellington

102 (405 to 408)

Conducted on July 29, 2021

405

1 too and then the final in ten days.
2 MR. CLUBOK: Thank you so much. Thank
3 you Nate, and Lisa and Robert Leonard for sticking
4 around this late.

5 REMOTE TECHNICIAN: I just wanted to
6 confirm as far as the exhibits go, do you just
7 want the new exhibits, 86 through 92, attached to
8 this transcript?

9 MR. CLUBOK: That's a great question.
10 (Deposition concluded at 8:20 p.m. EST)

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1 REPORTER'S CERTIFICATION
2 I, Lisa M. Barrett, the officer before
3 whom the foregoing deposition was taken, do hereby
4 certify that the foregoing transcript is a true
5 and correct record of the testimony given; that
6 Said testimony was taken by me stenographically
7 and thereafter reduced to typewriting under my
8 direction; that reading and signing was requested;
9 and that I am neither counsel for, related to, nor
10 employed by any of the parties to this case and
11 have no interest, financial or otherwise, in its
12 outcome.

13 IN WITNESS WHEREOF, I have hereunto set
14 my hand this 10th day of August, 2021.

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19 LISA M. BARRETT, RPR, CRR, CRC
20 NOTARY PUBLIC IN AND FOR
21 THE STATE OF MARYLAND

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